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**UTAH LABOR COMMISSION**

**TIMOTHY L. JONES,**

**Petitioner,**

**vs.**

**HUISH DETERGENTS, INC. and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 05-0073**

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Huish Detergents, Inc. and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Huish") ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of benefits to Timothy L. Jones under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Jones claims workers' compensation benefits from Huish for a work injury to his back that occurred on June 30, 2004. After holding an evidentiary hearing, Judge Marlowe awarded benefits, including temporary total disability compensation.

In its motion for review, Huish argues that the unavailability of light duty work for Mr. Jones was caused by his own actions, unrelated to his work injury, and therefore he is not entitled to temporary total disability compensation.

**FINDINGS OF FACT**

The Commission adopts Judge Marlowe's findings of fact, as supplemented by the record. The facts relevant to the motion for review are as follows:

Mr. Jones worked on Huish's production line as a packer. On June 30, 2004, Mr. Jones experienced back pain at work and later sought treatment. Although initially he was mistakenly diagnosed with an infection, by July 13, 2004, he was diagnosed with a back strain. On July 20, 2004, his doctor noted that Mr. Jones could only last five hours at work because of back pain, worsening with lifting. His doctor recommended either light duty work or two weeks of rest. Huish provided Mr. Jones light duty work. On August 31, 2004, his doctor noted that, although Mr. Jones was on light duty, ". . . [he] is only able to tolerate approximately four hours per day until his pain becomes significant and he is required to leave work."

**ORDER AFFIRMING ALJ'S DECISION**  
**TIMOTHY L. JONES**  
**PAGE 2 OF 3**

On September 6, 2004, Mr. Jones was terminated from employment for excessive absences. At the hearing, Mr. Jones testified that his back pain was the reason he was either unable to finish his shifts or unable to make it into work. Huish's witness confirmed that Mr. Jones would claim back pain as the reason for not being able to work.

**DISCUSSION AND CONCLUSION OF LAW**

The only issue on review is whether the unavailability of light duty for Mr. Jones was caused by his own actions, unrelated to his work injury. Section 34A-2-410(2) of the Utah Workers' Compensation Act provides:

In the event a light duty medical release is obtained prior to the employee reaching a fixed state of recovery, and when no light duty employment is available to the employee from the employer, temporary disability benefits shall continue to be paid.

The Commission has reviewed the evidence, particularly two separate medical accounts in July and August stating that Mr. Jones was having difficulty working because of back pain, and finds that Mr. Jones' absenteeism was caused by his work injury. Thus, when he was terminated for his absenteeism on September 6, 2004, prior to reaching a fixed state of recovery, light duty work was no longer available to him and he was then entitled to temporary total disability benefits. The Commission affirms Judge Marlowe's order for temporary total disability compensation.

**ORDER**

The Commission affirms Judge Marlowe's decision. It is so ordered.

Dated this 29<sup>th</sup> day of October, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

